



Oct. 18, 2016

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O’Rielly
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Business Data Services, WC Docket Nos. 16-143 & 05-25

Dear Mr. Chairman and Commissioners:

The Schools, Health & Libraries Broadband (SHLB) Coalition writes again¹ to express our appreciation for the Federal Communications Commission’s effort to bring down prices for high-capacity Business Data Services (BDS). The release of the Fact Sheet² reflecting the Chairman’s proposal to restrain prices for BDS is a significant milestone in a long pending proceeding.

Nonetheless, we are disappointed that the proposed Order, as described in the Fact Sheet, does not do more to bring down the high cost of Ethernet services, which are by far the dominant technology purchased by anchor institutions. As shown by the survey of E-rate applicants conducted by Funds for Learning below, **Ethernet services account for at least 71% of E-rate funded services purchased by schools and libraries.** In contrast, DS1 and DS3 services, the focus of the proposed regulatory framework, account for a very small percentage of E-rate funded services.

¹ See comments and ex parte letter submitted by the SHLB Coalition with others on Oct. 4, 2016 (<https://www.fcc.gov/ecfs/filing/1005179626478>) and on June 28, 2016 (<https://ecfsapi.fcc.gov/file/10628026205928/2016-06-28%20As%20Filed%20Public%20Knowledge%20et%20al.%20BDS%20Comments.pdf>).

² See, “Chairman Wheeler’s Proposal To Promote Fairness, Competition, And Investment In The Business Data Services Market,” released Oct. 7, 2016, at

² See, “Chairman Wheeler’s Proposal To Promote Fairness, Competition, And Investment In The Business Data Services Market,” released Oct. 7, 2016, at <https://www.fcc.gov/document/chmn-wheeler-update-business-data-services-rules>.

**FY 2016 Schools and Libraries Broadband (C1) Demand
Annual Pre-Discount Total Expense by Service Type**

Service Type	Annual Expense	% of Total
Ethernet	1,613,616,945	71%
OC-based services	226,828,352	10%
Switched Multimegabit Data Service	170,546,430	7%
MPLS	101,075,361	4%
Dark Fiber	96,835,782	4%
T-1 (w/fractional T-1s + T-3/4/5)	28,713,095	1%
Cable Modem and DSL	26,529,820	1%
DS-1/3/4 + ATM/Frame Relay/ISDN-BRI	19,884,152	1%
TOTAL	2,284,029,937	

Even those few anchor institutions that purchase TDM services today are likely to shift to Ethernet in the near future. Ethernet provides better scalability and performance, ease of operation, and cost-competitiveness for data applications. To cite just one example, the State Educational Technology Directors Association (SETDA) reports that only two school districts in Wyoming had Ethernet capability in 2011; today all twenty-three counties and forty-eight school districts in Wyoming have Ethernet.³ In fact, some of the major telecommunication carriers have announced their intention to discontinue offering TDM-based services altogether in the next several years

We firmly believe that the proposed regime should be technology-neutral and should apply to both Ethernet and TDM services. The record evidence shows that TDM and IP services are not two separate markets – they are substitutable services. The very first paragraph of the Commission’s Tech Transitions Order discusses how IP-networks are replacing TDM-based networks and calls for a “technology-neutral” policy.⁴ The fact that Ethernet services are sometimes

³ State K-12 Broadband Leadership: Driving Connectivity and Access, April 2016, p.10, at http://www.setda.org/wp-content/uploads/2016/03/State-K-12-Broadband-Leadership_SETDA_CommonSense_April12016.pdf.

⁴ “Communications networks are rapidly transitioning away from the historic provision of time-division multiplexed (TDM) services running on copper to new, all-Internet Protocol (IP) multimedia networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. . . Today, we take the next step in advancing longstanding competition and consumer protection policies on a technologically-neutral basis in order to ensure that the deployment of innovative and improved communications services can continue without delay.” See, In the Matter of Technology Transitions, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, GN-Docket No. 13-5, released Aug. 7, 2015, para. 1.

delivered over TDM circuits illustrates the difficulty of establishing different regulatory rules for these two technologies.

We recognize that the proposal discussed in the Fact Sheet would permit a complaint process for Ethernet services. The SHLB Coalition does not believe this to be an adequate remedy for the excessive prices being charged by incumbent carriers. The complaint process has been available in the past, but it is extremely difficult for anchor institutions to acquire and compare information about prices being offered to other entities so as to prove a violation through the complaint process. The complaint process is costly and time-consuming and is simply not a realistic alternative for anchor institutions that have significant budget constraints.

While we prefer that the regulatory regime should apply to circuits at or below 1 Gbps in non-competitive markets, we believe that **regulating both TDM and Ethernet services at or below 50 Mbps in an equivalent manner would help smaller and rural anchor institutions obtain more affordable broadband connections.**⁵ Small and rural schools and libraries do not have the competitive choices available to larger and urban institutions. A survey conducted by the Consortium for School Networking (CoSN) found that 54% of rural schools had only one provider of broadband service.⁶ Thus smaller and more rural schools, libraries, health providers and other rural anchors may be especially vulnerable to overcharges when purchasing low-bandwidth services from incumbent providers.⁷

The evidence in the record demonstrates that incumbent providers often exercise market power by charging unreasonably high prices for both packet-based business data services such as Ethernet, as well as legacy services, such as DS1 and DS3 services.⁸ It is likely that ILECs charge these extremely high prices in most

⁵ Reducing the prices charged schools and libraries would also reduce the demand for E-rate support. Thus, regulating Ethernet services would make more efficient use of the E-rate program and allow those funds to spread more widely to cover more schools and libraries or allow these funds to be available for internal connections (Category 2).

⁶ See, the Consortium for School Networking's (CoSN's) 2015 Annual E-Rate and Infrastructure Survey, page 14, available at http://cosn.org/sites/default/files/pdf/CoSN_3rd_Annual_Survey_Oct15_FINALV2.pdf.

⁷ While there is more data available about schools and libraries because of the E-rate program, the E-rate program does not cover the thousands of other anchor institutions, such as health providers, community centers, public housing authorities, public media and other anchor institutions that purchase broadband services and would benefit directly from by extending the proposed BDS regulatory regime to Ethernet services.

⁸ Economists who have analyzed the pricing data in this proceeding have found that ILECs reduce their prices substantially in response to competition. *See, e.g.*, Reply Declaration of Jonathan B. Baker on Competition and Market Power in the Provision of Business Data Services, paras. 5-6, attached to Letter from Jonathan B. Baker to Marlene H. Dortch,

locations. This is because, according to 2013 data, ILECs own the only connection or provide one of only two connections serving the vast majority business data service customer locations.⁹ Given the barriers to competition and deployment described in the SHLB Coalition’s Action Plan,¹⁰ it is highly unlikely that the level of concentration today differs significantly from the level observed in 2013.

The evidence in the record also justifies a more immediate rate reduction of 17% to 20% because of the many years that incumbent rates have been deregulated.¹¹ Reducing prices for broadband services would help our institutions expand their level of service to the communities they serve. Applying a price cap regulatory regime (or a benchmark regime if it is workable) and implementing an immediate rate reduction for both TDM and Ethernet services at or below 50 Mbps should be relatively straightforward. If additional work is necessary to fine-tune the rules, the Commission could delegate responsibility to the Wireline Bureau to implement the rules in a subsequent Bureau order.

Anchor institutions have often been invoked as among the biggest set of beneficiaries of the effort to rein in high-priced BDS services. The proposal set forth by the Fact Sheet, however, appears to offer few benefits to anchor institutions. We would like to work with the Commission to strengthen its final decision with specific price reductions and ongoing regulatory measures covering both TDM and Ethernet

Secretary, FCC, WC Docket Nos. 16-143, 15-247, & 05-25, RM-10593 (Aug. 9, 2016); Declaration of John Kwoka para. 31, attached as Exhibit A to Comments of Sprint, WC Docket Nos. 16-143 & 05-25, RM-10593 (filed June 28, 2016). This suggests that ILECs’ prices in non-competitive areas are unreasonably high.

⁹ Professor Rysman found that 77.2 percent of locations with demand for business data services were served by a single provider (usually the ILEC) and only 21.8 percent of such locations were served by two providers (one of which is usually the ILEC). *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Tariff Investigation Order & Further Notice of Proposed Rulemaking, 31 FCC Rcd. 4723, at 211 & tbl. 7 (2016).

¹⁰ See, “Connecting Anchor Institutions: A Broadband Action Plan”, released July 13, 2016, available at www.shlb.org/action-plan.

¹¹ For example, Sprint has submitted evidence to support a one-time reduction in the price cap index of at least 17.1%. See, Declaration of Chris Frentrup and David E.M. Sappington, (filed Aug. 31, 2016). Similarly, Professor Baker’s analysis suggests that it would be appropriate to reduce current rates by at least 19.7%. See Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services, para. 63 attached to Letter from Jonathan B. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016).

services to make high-capacity broadband more affordable for anchor institutions and encourage more competition and deployment, especially in rural and non-competitive markets.

Sincerely,

A handwritten signature in black ink that reads "John Windhausen, Jr." The signature is written in a cursive style and is contained within a thin black rectangular border.

John Windhausen, Jr.

Executive Director

SHLB Coalition

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